

newal which has been received by the director, or any notice of address change which has been received by the director. Notices mailed as above shall be deemed given upon their deposit in the United States mail.

(b) Any notice required or permitted to be given to the director by any person under this article shall not be deemed given until and unless it is received in the office of the director at the time and in the manner provided for filing applications in section 40-263 of this Code.

(c) It shall be the duty of each applicant and permittee to furnish notice to the director in writing of any change of residence or mailing address.

(Ord. No. 91-1168, § 4, 8-14-91)

**Secs. 40-274—40-280. Reserved.**

## **ARTICLE XII. MONITORING WELLS AND ENVIRONMENTAL TEST BORING FACILITIES**

### **Sec. 40-281. Definitions.**

As used in this article, the following terms shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

*Applicant* means an applicant for a permit under this article.

*Bond* means a cash deposit with the city, or a bond executed by the permittee, as principal, and a corporate surety authorized to transact business, as such, in Texas on condition that the permittee will promptly and fully comply with all provisions of this article and will reimburse the city or any utility company for all costs associated with the removal of the facility and the restoration of the facility site if removed by the city or a utility company pursuant to this article. A surety bond must be in a form approved by the director and be accompanied by a power of attorney or other convincing evidence of the issuing agent's authority to act for the surety company. A surety bond issued by a company that is not listed on the then current listing of accepted sureties on fed-

eral bonds as published by the United States Treasury Department must also be accompanied by a certificate of qualification as a surety from the Texas Board of Insurance Commissioners.

*Director* means the director of the public works and engineering department or any person designated by the director to perform his responsibilities under this article.

*Facility* means any mechanical device or monitoring well and its associated apparatus, placed within a public street, and designed and constructed to measure or monitor the quality or movement of foreign substances, elements, chemicals, fluids, or pollutants below the surface of the ground; or any mechanical device, method, or apparatus, placed in a public street and designed and constructed to obtain a sample soil core boring from a depth of greater than one (1) foot below the surface of the ground, for the purpose of removing soil for environmental quality testing.

*Parks official* means the director of the parks and recreation department or any person designated by that director to perform his responsibilities under this article.

*Permit* means a current and valid permit issued pursuant to this article.

*Permittee* means a person who holds a permit issued pursuant to this article.

*Public street* means the entire width between the boundary lines of every way which is held by the city in fee or by easement or dedication when any part thereof has been accepted by the city, or has been opened to the use of the public for purposes of vehicular travel; the term "public street" shall include any designated state or federal highway or road or any designated county road which is under the administrative control of the city for maintenance, repair, or vehicular traffic control purposes.

*Roadway* means that portion of a public street which is improved, designed, or ordinarily used for vehicular travel, exclusive of the curb, berm, or shoulder. In the event that a public street includes two (2) or more separate roadways, "roadway" means each such roadway separately.

*Sidewalk* means that portion of a public street which is between the curb lines, or the lateral lines of a roadway, and the adjacent property lines and is improved and designed for, or is ordinarily used for, pedestrian travel.

*Utility* means the city or any other person, whether franchised as a public utility or not, who is lawfully authorized to construct, install, or maintain any pipes for transportation of gas, liquids, or other materials, or any electrical distribution system, or any telephone or intelligence distribution systems, or any cable television transmission system, in, on, under, or over a public street.

(Ord. No. 90-1157, § 1, 8-14-91; Ord. No. 93-514, § 86, 5-5-93)

**Sec. 40-282. Permit required for non-governmental use.**

(a) By authority of a permit issued by the director under the provisions of this article, a permittee may install and maintain a facility at a designated location upon a public street. A separate limit is required for each separate facility to be installed.

(b) It shall be unlawful for any person to install or maintain a facility unless there is a permit for the facility.

(c) A single application for permits for multiple facilities may be filed with the director provided that the physical location of each proposed facility logically arises out of, and reasonably pertains to, the scheme and plan of a single environmental testing project. A separate permit is required for each separate facility to be installed. The requirements of this article governing the issuance of a permit must be fulfilled for each separate facility.

(d) The permit required under the provisions of this article shall not apply to the city, Harris County, the State of Texas, or any of their respective departments, employees, agents, or contractors acting upon the orders of an appropriate official for the purpose of obtaining immediate information for the alleviation or prevention of imminent danger or harm to the public health or the environment; for the purposes of responding to a trial or appellate court order or injunction; or

for the purpose of the preparation of, or in response to, pre-trial discovery for civil and criminal actions. This exception to the permit required by this article shall specifically not be available to non-governmental persons or entities operating under an administrative or court order or directive issued by the Texas Water Commission, the Environmental Protection Agency, or their respective successor or subsidiary agencies, for the purpose of identification and remediation of toxic waste sites or for voluntary and independent exploratory or preventative environmental investigations not subject to such orders or directives. (Ord. No. 91-1157, § 1, 8-14-91)

**Sec. 40-283. Location on public street.**

(a) Facilities shall be designed, constructed, and maintained in such a manner as to comply with the provisions of this section.

(b) A facility may not be located on, extend on to, nor intrude upon any portion of a roadway or a sidewalk unless the director determines that no reasonable alternative site exists. In any instance in which a facility must be situated on a sidewalk or roadway, it shall be installed entirely below the surface and covered in such a manner as to allow normal use of the roadway or sidewalk.

(c) A facility may not create any hazardous condition or obstruction of vehicular or pedestrian travel upon a public street.

(d) The design and location of a facility shall include all reasonable planning to minimize potential harm, injury, or interference to the public in the use of the public streets.

(e) Upon its removal a facility shall be properly closed by cementing or other sound engineering practice to prevent injuries to persons at the surface and underground contamination. (Ord. No. 91-1157, § 1, 8-14-91)

**Sec. 40-284. Design standards, plans.**

(a) The director, the city engineer, the utility official, and the parks official may jointly approve and promulgate design, construction, and maintenance standards for facilities. Such standards shall be so drafted as to ensure that facilities do

not impose a significant risk of personal injury or property damage.

(b) Consistent with this article and the standards promulgated under subsection (a), above, the officials named therein may adopt and promulgate standardized plans and specifications that permittees may utilize for facilities. Each applicant shall either adopt an approved plan or submit his own detailed plans prepared under the seal of a professional engineer registered as such in Texas with his application. Each set of plans shall show the design, dimension, and depth of the facility, the manner in which it will be placed, and the process that will be used for its removal and closure.

(c) The director, the city engineer, the utility official, and the parks official, or any one of them, may require the revision of any applicant's plans to conform to the standards promulgated or adopted in this article as a condition of granting a permit.

(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-285. Other permits.**

The granting of a permit shall neither excuse the permittee from obtaining nor obligate the city to grant any other permit or license that may be required by law for the installation or construction of the facility.

(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-286. Intent of article.**

It is the intent of the city council by the enactment of this article to regulate the surface and subsurface use and occupancy of public streets and rights of way by permittees and to establish a permitting mechanism and fee in accordance with the city's general power of control and regulation of public streets and highways as provided by law. However, this article shall not be construed as an assertion by the city of any property rights in derogation of abutting land owner's fee simple title and rights incident therein, in those cases where the city does not own fee simple title. It shall be the duty of permittees hereunder to notify all abutting landowners, whether title is held in fee or easement, of the permittee's receipt of the permit

provided for in this article and to obtain any requisite permission to access said land.

(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-287. Transfer; assignment; termination.**

A permit shall apply only to the designated location specified thereon, and no deviation from the plans for the facility as approved by the director may be made without the prior written consent of the director. Permits issued shall be personal to the permittee and his agents and employees. No assignment by any permittee of any obligation assumed or right granted under this article shall be effective unless and until expressly consented to in writing by the director. A permittee may terminate a permit prior to its designated expiration date by giving thirty (30) days' written notice to the city, removing the facility, and restoring the site as provided in this article. Such termination shall not release or excuse the permittee or his insurers from any obligation which arose in any manner by virtue of the acceptance or enjoyment of the permit.

(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-288. Street repairs; utilities.**

(a) The permittee shall upon five (5) days' prior written notice from the city or any utility company and at the sole expense of the permittee, temporarily remove his facility for such period of time as may be reasonably specified in the notice to accomplish any street or utility installation, repairs, replacement, or expansion.

(b) In the event of any emergency condition in which the notice required in subsection (a) may not be given without creating an inconvenience to the public or in the event that the permittee fails to comply with a notice given pursuant to subsection (a), then the city or the utility company may remove the facility and close the bore site at the sole risk and expense of the permittee by utilizing whatever reasonable force or means are necessary therefor.

(c) Each permittee shall bear all costs associated with the relocation of lines and other improvements belonging to the city or any utility that may require relocation for the installation or maintenance of the permittee's facilities. The city or the utility, as applicable, may require a deposit

for the estimated cost of the work prior to the commencement of the relocation work.  
(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-289. Maintenance; inspection.**

(a) The permittee shall maintain his facility in a good and safe condition and repair at all times. The permittee shall assume all risk of loss or damage to the facility, and neither the city nor any other person shall have any obligation to replace or repair the same under any circumstances.

(b) The director, the city engineer, the health officer, the utility official, the parks official, or any other inspector designated by the city shall have the right to inspect any facility at any time without the necessity of prior notice. Upon at least one (1) hour's notice given during regular hours (8:00 a.m. to 5:00 p.m., Monday through Friday, holidays excepted) the permittee shall open the facility and make a sample of the well contents available to the health officer.

(c) The director may notify the permittee in writing of any deficiency under this article in the physical condition of any facility and shall afford the permittee a reasonable period of time to correct the same. In determining the length of time to be allowed the director shall consider the danger, if any, which is posed by the deficiencies and the nature of the changes or repairs required. In the event that the director is of the opinion that the continued existence of the facility will constitute a significant threat to the safety of the public pending its repair, he may order it removed at once.

(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-290. Site work; restoration.**

(a) At all times during the installation of any facility within the public street, the roadway(s) shall be kept open by the permittee for vehicular traffic in a reasonable manner, and no obstruction of the sidewalks shall be permitted so as to prevent the use thereof by pedestrians for an unreasonable period of time. Dirt and other material removed during the installation of the facility within the public street shall not be permitted to remain on the public street, and said dirt and other material from the site shall be removed at the

risk, liability, and expense of the permittee. All excavations or obstructions of any kind which are permitted during the period of permittee's construction shall be properly barricaded and shall also be well illuminated during the night time.

(b) Upon the revocation or expiration of the permit, if not renewed, the permittee shall remove the facility, close the bore site, and restore the public street to its previous condition at his sole expense. Any facility which has not been removed by the tenth day next following the revocation or expiration of the permit shall be deemed abandoned, and it may be removed by the city without notice to the permittee. Removal of the facility by the city shall be at the sole expense of the permittee and shall be recorded as a charge against the permittee's restoration bond.

(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-291. Notices.**

(a) Any notice required or permitted to be given to the city under this article may be given by certified United States Mail, return receipt requested, postage prepaid, addressed to the director at his then current mailing address.

(b) Any notice required or permitted to be given to a permittee under this article may be given by certified United States Mail, return receipt requested, postage prepaid, addressed to the permittee at the mailing address designated in the permit application. A permittee may amend the mailing address specified in his application from time to time, upon written notice to the director given in the manner specified in this section.

(c) Notices mailed as provided in this section shall be deemed given upon their deposit in the United States Mail.

(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-292. Indemnity.**

By the acceptance of a permit the permittee, his assigns, successors, and representatives agree, obligate, and bind themselves to indemnify, defend and hold and save forever harmless the city, its officers, agents, and employees from all liability, costs, or damages arising in any manner on ac-

count of the installation, maintenance, or removal of the permittee's facility on the public streets. (Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-293. Insurance; bond.**

(a) Each permittee shall as a condition of the permit hereunder furnish to the director written evidence that he has in effect a policy of public liability insurance in the amount of not less than one hundred thousand dollars (\$100,000.00) per occurrence for property damage and three hundred thousand dollars (\$300,000.00) per occurrence for bodily injuries or death occurring in relation to, or arising in any manner out of, the permittee's installation, maintenance operation, or removal of the facilities covered thereby in the public streets. The policy shall be issued by a carrier authorized to do business in the state, shall designate the city as an additional insured, and shall include a cross-liability endorsement.

(b) Each permittee shall furnish the bond in an amount and form determined by the director to be adequate to cover the cost of removal of his facilities, closure of the well bore, and restoration of the public street to its condition prior to the installation.

(c) The bond and evidence of the insurance need not be furnished with the application; however, they shall be furnished to the director prior to the issuance of the permit. The proof of insurance shall include a covenant extending through the term of the permit that the insurer will provide the director ten (10) days' prior written notice in the event of cancellation or nonrenewal thereof. (Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-294. Application.**

(a) Any person who desires a permit shall make application therefor to the director. Each application shall set forth and include the following:

- (1) The name of the applicant. If the applicant is a corporation, partnership, or association, then the applicant shall provide evidence of its existence, of its authority to maintain the facility, and of the authority of the persons signing the application to act on behalf of the entity.

- (2) The applicant's mailing address for any written notice required or permitted to be given under this article.
- (3) An acknowledgment that the applicant is aware of the terms and provisions of this article and will be acceptance of a permit, if awarded, agree to be bound thereby and by all amendments adopted thereto in all respects in the exercise of the rights granted under the permit.
- (4) The name, home and business street addresses, and home and business telephone number of two (2) persons who may be contacted by the city, any utility, or other person in the event of any emergency regarding the facility.
- (5) The names, addresses, and telephone numbers of any agents who will perform any work for the permittee regarding the installation, monitoring, or removal of the facility.
- (6) The accurate location of the proposed facility which shall be depicted on a diagram prepared by a registered professional surveyor or engineer.
- (7) Any other information specified pursuant to the terms of this article or reasonably required by the director to review and act upon the application.

(b) Such application shall be sworn to be true and correct by the applicant and shall be submitted in any reasonable number of copies that the director may specify.

(c) Applications for renewal permits shall be submitted in the same form and manner as original applications, provided that any information furnished in a prior application which has not changed may be adopted by reference. (Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-295. Issuance; review.**

(a) The director shall forward copies of the application to the city engineer, the utility official, and the parks official for their review pursuant to subsections (b) and (c) prior to his acting on the application. Upon its approval under subsections

(b) and (c) the director shall review and approve the application for the facility unless he finds:

- (1) That the application or required information furnished therewith is incomplete;
- (2) That any statement on the application or information furnished therewith is false in any material respect; or
- (3) That the applicant's proposed facility does not comply in any manner with the requirements of this article and regulations adopted hereunder.

(b) Each application shall also be referred by the director to the utility official and the city engineer who shall review the proposed facility to determine whether its installation or maintenance will interfere with any existing or planned improvement of the city or any existing or planned improvement by a utility that is known by the city. The director, as a condition for award of the permit, may require an applicant to furnish, from utilities that are not owned, operated, or maintained by the city, letters of release; or leases, licenses, or other instruments that have been duly recorded in the office of the county clerk where the facility is to be situated, evidencing the applicant's right to utilize the site. The city engineer may, by his own action, refer copies of the application to utilities for comment or may require the applicant to do so. The city engineer and utility official shall approve the application unless they find that the proposed facility will interfere with existing or planned lines or improvements of the city or any utility. The approval of the application by the city engineer and utility official shall not be deemed to excuse any obligation of a permittee to pay relocation fees as provided in section 40-288(c) of this Code.

(c) Each application shall also be referred to the parks official who shall review the same to determine whether the facility would cause any significant damage to trees or landscaping. The parks official shall approve the application if he finds that all reasonable precautions have been taken to avoid permanent damage to trees and landscaping.

(d) The director may condition his award upon any revisions that he, the city engineer, the utility

official, or the parks official determine to be necessary in the design of the proposed facility to meet the standards specified in this article. Additionally, the director shall condition his award upon the furnishing of any requirement of this article which was not submitted with the application. The amount of the bond shall be specified by the director.

(e) If an application is not approved, the director shall notify the applicant thereof and of the reasons therefor in writing.  
(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-296. Fees.**

(a) A nonrefundable fee of two hundred dollars (\$200.00) is hereby imposed for each original application.

(b) The nonrefundable fee provided for in subsection (a) of this section, plus an additional nonrefundable processing fee of twenty-five dollars (\$25.00) levied on the second and each additional proposed facility is hereby imposed for each original application for permits for multiple facilities.

(c) A nonrefundable fee of twenty-five dollars (\$25.00) is hereby imposed for each renewal permit.

(d) All fees shall be tendered to the director with the application by certified or cashier's check on a bank that is authorized to transact business in the State of Texas.  
(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-297. Term.**

The term of each permit, whether original or renewal, that is issued hereunder shall be one (1) year from the date of its issuance.  
(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-298. Revocation.**

(a) Any permit issued under this article may be revoked in accordance with the provisions of this section if it is found that:

- (1) Any material statement made or information furnished with or in connection with the review of the application was false;

- (2) Conditions have changed such that the use of the permittee's facility no longer meets all applicable requirements of this article or such that the permittee's use interferes with the public's use of the public streets or creates any hazardous condition thereon;
- (3) The permittee has failed to comply with any provision of this article; or
- (4) The facility has not been installed in compliance with the permit within ninety (90) days after its issuance, unless an extension is granted for good cause by the director.

(b) Whenever the director receives reliable information that grounds for revocation of a permit exist, he shall investigate the facts. If he finds that there are grounds for revocation of a permit, he shall give a written notice to the permittee setting forth:

- (1) The specific grounds upon which the permit in question may be revoked;
- (2) That there will be a hearing before a hearing official designated by the director in which the city will seek the revocation of the permit;
- (3) The date, time, and place of such hearing; and
- (4) That the permittee may appear in person and be represented by an attorney.

(c) After completion of the presentation of evidence by all parties, the hearing official shall make written findings and render an order as to whether or not there are grounds for revocation of the permit. If there are such grounds, then he shall order the permit to be revoked.

(d) The decision of the hearing official shall be final.

(e) Notwithstanding the foregoing grounds and procedures, the director may revoke any permit in whole or in part upon ten (10) days' notice to the permittee and without a hearing thereon if he determines that the facility should be removed or relocated to accommodate any widening, realignment, or extension of the public streets or other public improvements or utility improvements. The director may also revoke a permit for which the

insurance or bond has been cancelled or has expired without renewal, without a hearing, after five (5) days' written notice and failure of the permittee to replace the insurance or bond.

(f) The revocation of a permit under this section shall not release or excuse the permittee or his insurers or sureties from their duty to remove the facility or any other obligation which arose by virtue of the acceptance or enjoyment of the permit.

(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-299. Other appeals.**

Except as provided in subsection (e) of section 40-298, any decision of the director, the city engineer, the utility official, or the parks official under this article may be appealed, by a permittee or applicant, to a hearing official designated by the director upon written notice of appeal given to the director within ten (10) days after the permittee receives notice of the decision complained of from the director. The hearing official shall conduct a hearing thereupon in the manner contemplated by the foregoing section for revocations.

(Ord. No. 91-1157, § 1, 8-14-91)

#### **Sec. 40-300. Existing facilities.**

Any and all existing facilities currently operating, either by previous permit or permission issued by the city, shall automatically be governed by the terms and provisions of this article as of [August 19, 1991,] the effective date of this article. All owners or operators of existing and operating facilities shall, within ninety (90) days of [August 19, 1991,] the effective date of this article, file with the director a registration form for each facility listing the name and address of the owner or the operator, the location, type and proposed life span of the facility, and any other information the director shall find pertinent. All owners or operators of said facilities shall, within one (1) year from the date of registration of the facility, obtain a permit for said facility or shall have removed said facility from the street and restored said site. Failure to register each existing and operating facility, to obtain a permit for each facility or to remove each facility, within the time periods provided for herein, shall be un-

lawful and shall subject the owner or the operator of said facility to a penalty of \$200.00 per day during the continuance of the violation. The city shall have the right to remove each noncomplying facility after the passage of ten days following the date of noncompliance and shall have the right to institute a civil suit for damages, costs of removal and restoration, and attorney fees against the owner or the operator of said noncomplying facility. The existence of any penalty and costs levied against an owner or an operator of a facility shall serve as a bar to the future issuance, to the owner or the operator, of a permit provided by this article until all such penalties and costs are paid in full.

(Ord. No. 91-1157, § 1, 8-14-91)

**Secs. 40-301—40-310. Reserved.**

### **ARTICLE XIII. SPECIAL RACING EVENTS**

#### **Sec. 40-311. Nature of the events and definitions.**

The city council desires that there be an opportunity to hold special racing events in the city and to encourage and facilitate the promotion of such events upon such terms and conditions as the city council may approve by written agreement.

(Ord. No. 97-1055, § 2, 9-3-97)

#### **Sec. 40-312. Definitions.**

As used in this article, the following words and terms shall have the meanings herein ascribed, unless the context of their use clearly indicates another meaning:

*Promoter* shall mean the person principally responsible for holding the special racing event and who is authorized to enter into a written agreement with the city regarding the conduct of the special racing event and setting forth the responsibilities of the parties.

*Racecourse area* shall mean the property within a perimeter to be defined by written agreement between the promoter and the city that contains the track or racecourse and the structures and facilities necessary for the conduct of the special racing event.

*Sanctioning body* shall mean a statewide, national or international organization that regularly engages in the governance, supervision or sanctioning of any form of auto racing.

*Special racing event* shall mean an auto race or races held within a consecutive period of time specified by written agreement between the promoter and the city and that is held under the auspices or with the approval of a sanctioning body.

(Ord. No. 97-1055, § 2, 9-3-97)

#### **Sec. 40-313. Terms for conducting special racing events.**

(a) Notwithstanding any ordinance, code, rule or regulation of the city to the contrary, a special racing event may occupy and utilize the racecourse area and any public property, facilities or structures therein for purposes of conducting the special racing event for a temporary period and under such terms and conditions as may be specified in one or more written agreements between the promoter and the city. Such terms and conditions may authorize, without limitation, charging of admission to race events, sale of food, beverages or merchandise, street improvements or alterations, temporary removal or alteration of structures within the racecourse area, temporary construction of fences, viewing stands, signage, concession structures, storage or maintenance structures or any other structure, service or facility reasonably necessary to promote and conduct the special racing event. This subsection shall not be construed to prohibit the inclusion in such an agreement of interested parties other than the promoter and the city or to prohibit other agreements between any parties relating to the special racing event, provided that no provision of any such agreement shall conflict with any provision of this article.

(b) Any structure or facility for storing or dispensing fuel or other potentially dangerous materials, any temporary electrical service equipment or facility utilized in the special racing event and/or any temporary structures such as viewing stands, booths, decks, barriers, towers or poles shall be subject to inspection and approval by both the building official and the fire marshal or